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## Bond deal raises claim of conflict

### Power agency official part of retained firm

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In a deal that some say reeks of inside dealing, the law firm that employs the chairman of the State Power Authority stands to benefit to the tune of \$400 an hour from the authority's pledge to finance more than \$100 million of construction at Canal Side.

In December, the Power Authority agreed to earmark \$8.4 million annually for 20 years to finance construction bonds for the project that includes the site of the now-demolished Memorial Auditorium. The money, one of the state's largest economic development investments in the region in recent years, came over the strenuous objections of the authority's vice chairman.

Bond sales generate big fees for assorted professionals, and in June, the Empire State Development Corp., retained the underwriters and lawyers who would handle the Canal Side deal.

The politically connected law firm of Harris Beach, whose partners include Power Authority Chairman Michael J. Townsend, was selected as bond counsel.

Townsend is part of the firm's public finance division, which handles bond sales. He is not working on the Canal Side deal, but two of his colleagues in his Rochester office, plus one of the firm's attorney in New York City, are handling the matter.

The Power Authority "puts up public money, and the chairman's law firm gets a contract out of it. It's an obvious conflict of interest, and it merits further investigation," said Kevin Connor, co-director of the Public Accountability Initiative, a research and watch dog organization perhaps best known for its recent study of the economic impact of locating a Bass Pro store at Canal Side.

Steve Matlin, senior counsel for Empire State Development, described the selection of Townsend's firm, which is expected to earn \$50,000 to \$100,000, as "merely coincidental."

The development corporation was not aware that Townsend worked for Harris Beach when the firm was retained, Matlin said. He added that the development corporation was not troubled when it later learned of Townsend's connection to the firm.

"We didn't think it was problematic whatsoever," he said.

But Connor said it "stretches the imagination that someone involved in finalizing this transaction wasn't aware of the chairman's connection to Harris Beach."

Erie County Comptroller Mark C. Poloncarz, whose office previously sold \$14 million in bonds for Canal Side, also expressed unease with the arrangement.

"It's not illegal, but it is the kind of thing you'd like to avoid," he said.

Even Jordan Levy, chairman of the Erie Canal Harbor Development Corp., which would use the bond proceeds, concedes the hiring of Harris Beach doesn't look good, while insisting no fix was in.

"Is there an appearance that things aren't kosher? You could make that claim, and I would be hard-pressed to disagree with that," he said.

Townsend, a member of the authority board since 2004 and chairman since August 2008, did not return repeated phone calls seeking an interview.

Funding from the Power Authority is critical to Canal Side, the proposed \$300 million mixed-use development at the foot of Main Street that would include restaurants, stores, offices, residences, entertainment, museums, hotels and public space.

In 2005, to help secure local support for the authority's application to renew its license to operate the Niagara Power Project hydropower plants in Lewiston, the authority agreed to provide funds in Erie County with a net present value of

\$3.5 million annually over 50 years. A portion of that money was envisioned as going toward development of the inner harbor, including what is now Canal Side.

Last fall, Rep. Brian Higgins, D-Buffalo, who wanted the Power Authority to invest more of its profits in Western New York, negotiated a richer deal.

In total, the authority committed to funding with a net present value -- essentially, the value of a dollar today compared to the value of that same dollar in the future -- of \$8.4 million annually over 20 years. That's enough to finance \$105 million to \$110 million in bonds, to be used primarily to pay for public infrastructure. The bond sale has been delayed, possibly until next year, because of Bass Pro's decision not to locate a store on the site.

Not everyone on the Power Authority's governing board was happy with the agreement to underwrite Canal Side's bonds, which was announced Dec. 12 with great fanfare.

Jonathan F. Foster, the authority's vice chairman, raised two objections at the authority's board meeting three days later.

According to the minutes of that meeting, Foster "stated that he feels this project is not consistent with the authority's mission or the additional fiduciary responsibilities imposed on the trustees by recent amendments to the Public Authorities Law."

Townsend, according to the minutes, was quick to defend the deal, which the board then unanimously approved.

While the developers of Canal Side were not ready to sell bonds, Empire State Development decided this spring to hire bond counsel to begin dealing with the issue, said Matlin, the agency's attorney.

The development corporation has approved nine firms, including Harris Beach, to provide bond counsel services and attempts to spread work around, Matlin said.

Matlin said he consulted with Levy, the Erie Canal Harbor Development Corp. chairman, and they agreed to retain an upstate firm. Harris Beach is one of two upstate firms on the state's list.

"I'm the one who insisted it was a one of the upstate firms," Levy said. "I said 'I don't care which one you choose, but it needs to be an upstate law firm.'"

Levy also said he didn't have "the foggiest clue" that Townsend worked for Harris Beach.

"I work with [Power Authority President Richard M.] Kessel. I don't even know who he [Townsend] is. I had no clue."

Harris Beach's client list includes a number of industrial development agencies around the state. Under its contract for the Canal Side deal, fees range from \$300 to \$400 an hour, depending on an attorney's rank in the firm.

Connor, of the Public Accountability Initiative, characterized the choice of Harris Beach as part of a pattern.

"There are a lot of conflicts involving the Canal Side development project, whether it is Bass Pro, Benderson, Phillips Lytle or any other number of corporate interests," he said. "Why does this authority continually enter into business deals that involve potential conflicts of interest?"

Niagara Common Council Member David A. Rivera said Canal Side development officials need to "do more in terms of disclosure and a policy to avoid these kinds of conflicts."

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## Comments

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